

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014090112

ORDER DENYING STUDENT'S
REQUEST FOR AN ORDER
DIRECTING DISTRICT TO HOLD AN
INDIVIDUALIZED EDUCATION
PROGRAM TEAM MEETING

On February 19, 2015, Student filed a motion for an order directing Berkeley to hold an individualized education program team meeting for Student. On February 24, 2015, District filed an opposition. On February 25, 2015, Student filed a reply.

APPLICABLE LAW

A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties), special education law does not provide for a summary judgment procedure.

DISCUSSION AND ORDER

On August 29, 2014, Student filed a complaint alleging that that District denied Student a FAPE for the 2012-2013 and 2013-2014 school years by failing to assess and identify Student as eligible for special education, placing Student in an inappropriate residential treatment center, refusing to reimburse Parents for Student's subsequent privately-funded placement in a neuropsychiatric hospitalization program, and failing to offer Student a District-funded alternative to placement to the neuropsychiatric program.

On October 20, 2014, Student filed a first amended complaint adding allegations that District failed to develop an appropriate individualized education program for the 2014-2015 school year.

On February 2, 2015, Student filed a second amended complaint adding allegations that District did not timely or appropriately assess Student in Fall 2014, that Student was privately placed by Parents at a nonpublic school (Heritage), that Heritage was subsequently

offered as placement by the IEP team, that District has not paid Heritage, that Heritage has informed Parents that Parents must pay for additional services as part of Student's placement, and that District has refused to timely call an IEP team meeting to consider completed assessments and Heritage's additional service requests.

Student's current motion seeks an order that District hold a meeting to develop an IEP for Student no later than March 2, 2014. Student argues that Parent and her counsel have been requesting an IEP team meeting since November 2014, but District has not responded to those requests. Student contends it is urgent that the completed assessments and additional services requests from Heritage be reviewed by an IEP team. Student concedes that she has no authority in support of her request, but cites two OAH decisions and one prehearing order that have ordered IEP team meetings.

District distinguishes the OAH orders cited by Student as either part of a decision issued after a full evidentiary hearing or included in a distinguishable stay put order. District contends that whether and when District is required to hold an IEP team meeting is an issue of fact, and that Student's motion is a thinly disguised motion for summary judgment.

Student argues in reply that she has not requested an IEP team meeting as a remedy in her second amended complaint, and so is not seeking summary judgment. Student contends that District is failing to hold an IEP because there is a due process action pending, and that prehearing intervention by OAH is necessary for Student to obtain the services she needs.

Here, Student's motion seeks a prehearing remedy to address District's failure to timely develop an IEP. Whether District is responsible for developing an IEP for Student, and if so, whether Student has been offered a FAPE, are primary issues for this due process proceeding. The order sought by Student requires a prehearing ruling on the merits, similar to a summary adjudication of issues, which is not provided for under special education law.

Further, Student is unable to provide any authority for her request. The fact that OAH has ordered IEP's to be conducted after a full evidentiary hearing does not support Student's request for a prehearing order. The stay put order cited by Student is distinguishable as involving a school district that did not dispute responsibility for the student's program, as District does in this matter. (See OAH Case No. 2012040848, Order Granting Motion for Stay Put, May 7, 2012.) Here, whether District is responsible for Student's educational program, and the extent of District's responsibility to develop an IEP for Student, is very much in dispute.¹

Accordingly, Student's motion for a prehearing order that District hold an IEP team meeting is denied.

¹ Student's own motion for stay put in this matter was vigorously opposed by District, in part, on the ground that it was not responsible for providing Student with a FAPE while she was privately placed in a hospitalization program. Student's motion for stay put was denied by Order dated October 23, 2014.

The hearing in this matter is scheduled to begin in just over 30 days, on April 1, 2015. Student will have an opportunity at that time to fully present facts and law in support of Student's contention that District was and is responsible for developing an IEP for Student, and that a FAPE includes the special education program and services sought in the second amended complaint.

IT IS SO ORDERED.

DATE: February 26, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings